

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Fort Myers, FL, Employer)

**Docket Nos. 10-1935 &
11-243
Issued: June 28, 2011**

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On July 20, 2010 appellant filed an application for review of a May 4, 2010 decision of the Office of Workers' Compensation Programs, file number xxxxxx754, which affirmed an October 6, 2009 decision denying appellant's claim for a recurrence of disability.¹ The appeal was docketed as number 10-1935.

The May 4, 2010 decision referenced another back injury claim filed by appellant, file number xxxxxx211.² In the May 4, 2010 decision, an Office hearing representative noted reviewing file number xxxxxx211 and advised that a second opinion physician in that claim found that appellant continued to need medical limitations based on the lumbar condition in file number xxxxxx754. The hearing representative referenced another second opinion in file number xxxxxx211 noting that the physician determined that appellant was opioid dependent and had chronic pain syndrome. The hearing representative further noted: "the claimant's prior claim of xxxxxx211 was also reviewed in the event that any additional medical information was

¹ The Office accepted this claim for a lumbar strain and disc disorder arising from an October 19, 2003 traumatic injury. It also accepted opioid dependence and chronic pain syndrome.

² File number xxxxxx211, date of injury May 21, 2006, was accepted for back and hip contusions.

available ... regarding disability in the present claim” file number xxxxxx754. On appeal, appellant asked that the claims for work-related back injuries be consolidated as both cases pertain to the same condition.

Additionally, the Board notes that after the February 11, 2010 oral hearing in file number xxxxxx754, appellant submitted additional evidence. This included reports from Dr. Gene Mahaney, appellant’s treating physician, dated September 23, December 15, 2009 and January 28, 2010 which document appellant’s continued treatment. These documents were received by the Office on April 21, 2010. In the May 4, 2010 decision, the hearing representative stated that appellant did not submit evidence after the February 11, 2010 hearing and the hearing representative did not consider these reports submitted by appellant.

On November 8, 2010 appellant filed an appeal of a May 7, 2010 Office decision in file number xxxxxx211, which declined to modify a June 11, 2009 decision that terminated compensation benefits.³ The appeal was docketed as number 11-243. The May 7, 2010 decision referenced file number xxxxxx754 and certain conditions accepted in that claim and the status of claim adjudication in file number xxxxxx754. The decision also denied appellant’s request to combine the two claim files noting that it was “not uncommon” to keep the files separate or to combine them. The Office found that, as the evidence was not sufficient to change the June 11, 2009 decision, it would not combine the files. On appeal, appellant asserts that the two claim files should be combined to avoid piecemeal adjudication.

The Board has duly considered the matter and notes that the case is not in posture for a decision. In appeal number 10-1935 and Office file xxxxxx754, the hearing representative did not consider all of the evidence submitted prior to issuance of the May 4, 2010 decision. In the case of *William A. Couch*,⁴ the Board held that when adjudicating a claim, the Office is obligated to consider all evidence properly submitted by a claimant and received by the Office before the final decision is issued. The case must be remanded for the Office to consider this evidence.

Furthermore, the Board finds that the two claims in the two appeals before the Board should be combined. File number xxxxxx754, involves appellant’s claim for a recurrence of disability beginning May 21, 2006. In the May 4, 2010 decision in file number xxxxxx754, the hearing representative noted reviewing evidence and findings made in file number xxxxxx211 in reaching her decision. Likewise in the May 7, 2010 decision in file number xxxxxx211, the Office noted reviewing file number xxxxxx754 in reaching its decision. Pursuant to Office procedures, it has determined that cases should be combined where correct adjudication depends on cross-referencing between files. In the instant appeal, it appears that, for a full and fair adjudication, the Office claims pertaining to appellant’s lumbar conditions should be combined pursuant to Office procedures.⁵ This will allow the Office to consider all relevant evidence in

³ The May 7, 2010 decision was issued following an April 5, 2010 order remanding case in which the Board set aside the June 11, 2009 decision finding that the Office’s decision did not consider evidence and argument provided by appellant on June 10, 2009. Docket No. 09-1802 (issued April 5, 2010).

⁴ 41 ECAB 548 (1990).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

adjudicating the claim. Moreover, to consider appellant's appeal at this stage would involve a piecemeal adjudication of the issues in this case and raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome.⁶

The case will be remanded to the Office to combine case file numbers xxxxxx754 and xxxxxx211. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision in the combined claims.

IT IS HEREBY ORDERED THAT the May 7 and 4, 2010 decisions be set aside and the matter remanded to the Office for further proceedings consistent with this order of the Board.

Issued: June 28, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁶ See *William T. McCracken*, 33 ECAB 1197 (1982).